



Mike
Svikis
Planning

Merit Assessment of Planning Proposal
for Former Broken Head Quarry,
Broken Head Road

DRAFT

Prepared for Byron Shire Council
by MikeSvikisPlanning
7 May 2024

This Report has been prepared by MikeSvikisPlanning for Byron Shire Council and may only be used and relied upon by Byron Shire Council for the purpose agreed between MikeSvikisPlanning and Byron Shire Council.

MikeSvikisPlanning otherwise disclaims responsibility to any person other than Byron Shire Council for any matter arising in connection with this Report. MikeSvikisPlanning also excludes implied warranties and conditions, to the extent legally permissible.

The services undertaken by MikeSvikisPlanning in connection with preparing this Report were limited to those specifically detailed in the Report and are subject to the scope limitations set out in the Report.

The opinions, conclusions and any recommendations in this Report are based on conditions encountered and information reviewed at the date of preparation of the Report. MikeSvikisPlanning has no responsibility or obligation to update this Report to account for events or changes occurring subsequent to the date that the Report was prepared.

The opinions, conclusions and any recommendations in this Report are based on assumptions made by MikeSvikisPlanning described in this Report. MikeSvikisPlanning disclaims liability arising from any of the assumptions being incorrect.



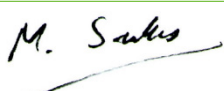
ABN 84638645183

3 Gibingbell Close Ocean Shores 2483

Mob: 0447 805 871

Ph: (02) 6680 1003

E: mikesvikisplanning@bigpond.com

Rev No	Author	Approved for issue	
		Signature	Date
A	Mike Svikis		7 May 2024

CONTENTS

1	Background	1
1.1	Objective of this Report	1
1.2	Subject Land	2
1.3	Existing Planning Controls	3
2	Planning Proposal	4
3	Strategic Merit	5
3.1	Is the planning proposal consistent with the relevant regional or subregional strategy?	5
3.2	Is the planning proposal consistent with a relevant local council strategy?	7
3.3	Does the planning proposal respond to a change in circumstances that has not been recognised by the existing planning framework?	8
4	Site-specific Merit	9
4.1	The natural environment (including known significant environmental values, resources or hazards)	9
4.2	The existing uses, approved uses and likely future uses of land in the vicinity of the proposal	18
4.3	The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision	18
5	Conclusion	21
5.1	Strategic Merit	21
5.2	Site-specific Merit	21
	Appendices	23

1 Background

In March 2023, Byron Shire Council received a planning proposal requesting that it rezone land on the western side of Broken Head Road to permit residential development (Appendix A). After early consultation with Council and the NSW Biodiversity Conservation Division, the applicant opted to prepare a Biodiversity Development Assessment Report. This report was submitted to Council on 28 March 2024, with a request that the planning proposal be reported to Council.

Council then engaged Mike Svikis Planning to undertake an independent review of the merit of this application (and supporting information). This merit assessment can then be reported to Council so that it may make a decision as to whether the planning proposal is supported.

The structure of this assessment report is consistent with the Strategic Merit Test and Site-specific Merit Test as outlined in the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023). The Department defines strategic and site-specific merit as follows:

Strategic merit *A proposal's demonstrated alignment with the NSW strategic planning framework or current government priority. When an LEP is made or amended through the planning proposal, it must demonstrate strategic merit having regard to the criteria in Section 2 of [the Local Environmental Plan Making Guideline].*

Site-specific merit *A proposal's demonstrated environmental, social and economic impact on the site and surrounds and ability to be accommodated within the capacity of the current and/or future infrastructure and services. When an LEP is made or amended through the planning proposal, it must demonstrate site-specific merit by having regard to the criteria in Section 2 of [the Local Environmental Plan Making Guideline].*

1.1 Objective of this Report

The objective of this report is to determine if the planning proposal passes the strategic merit test and the site-specific merit test.

1.1.1 Strategic Merit Test

- Is the planning proposal consistent with the relevant regional or subregional strategy? This would include the *North Coast Regional Plan 2041*;
- Is the planning proposal consistent with a relevant local council strategy, endorsed by the Department? This would include Byron LSPS and the *Byron Shire Residential Strategy 2041* (adopted 14 March 2024, but not yet endorsed) or previous residential strategies;
- Does the planning proposal respond to a change in circumstances that has not been recognised by the existing planning framework? Such as:
 - Key infrastructure investment;
 - Key government priorities;
 - Changes to population and demographic trends such as housing and jobs.

Passing the strategic merit test is fundamental to supporting the planning proposal. Where a planning proposal fails to adequately demonstrate strategic merit, the relevant planning authority is unlikely to progress the proposal, despite any site-specific merit it may have.

1.1.2 Site-specific Merit Test

This requires an assessment of site-specific merit and compatibility with surrounding land uses, having regard to:

- the natural environment (including known significant environmental areas, resources or hazards);
- the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal;
- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

1.2 Subject Land

The subject land is described as the old Broken Head Quarry site on the western side of Broken Head Road. The old quarry on the eastern side is not part of this planning proposal. The subject land is described as Lot 1 DP 123302 and Lot 2 DP 700806, Broken Head Road. The combined area of these two lots is approximately 32.7 hectares.

Figure 1: Aerial photograph of the subject land with cadastre



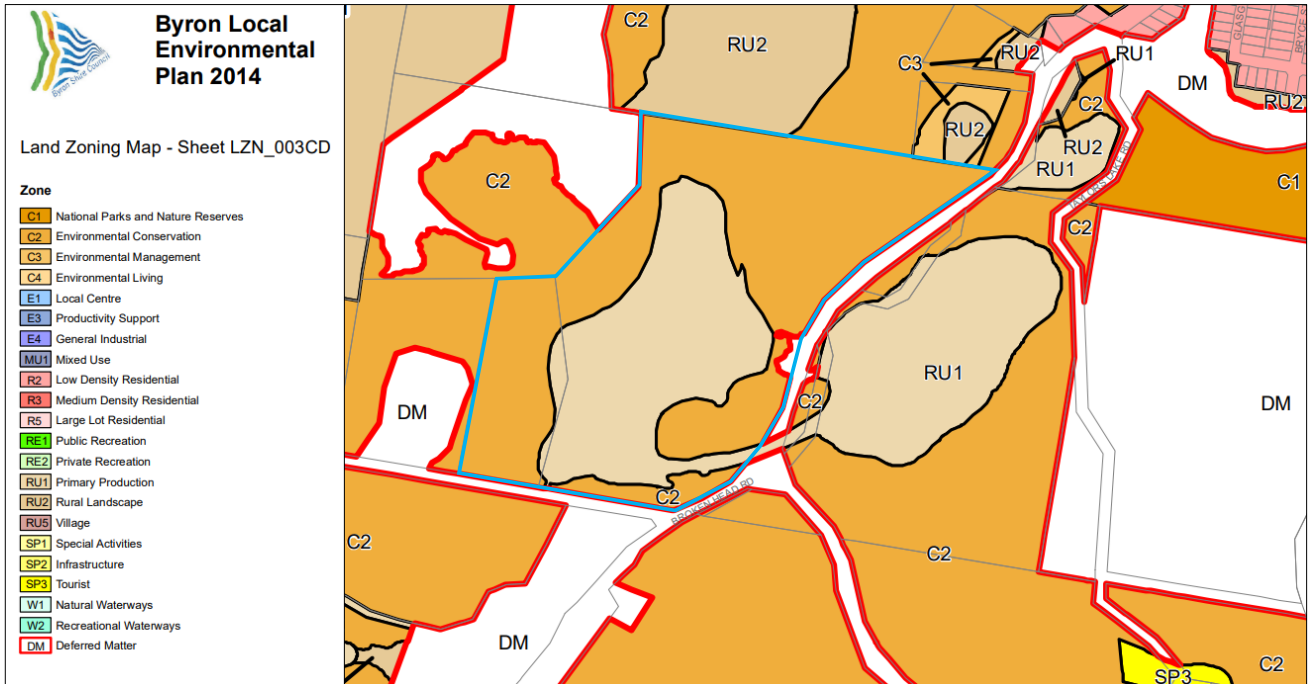
Source: Byron GIS

1.3 Existing Planning Controls

The subject land is zoned partly RU1 Primary Production, partly C2 Environmental Conservation and partly Deferred Matter under *Byron Local Environmental Plan 2014* (BLEP 2014) (Figure 2). It has a 40-hectare Minimum Lot Size and a maximum Building Height of 8.5 metres. No FSR applies to the land. The small Deferred Matter area is zoned Rural 7(d) Scenic Escarpment zone under *Byron Local Environmental Plan 1988* (BLEP 1988).

Adjoining land is variously zoned C2 Environmental Conservation and RU2 Rural Landscape (BLEP 2014) and Deferred Matter (BLEP 1988).

Figure 2: Existing zones under BLEP 2014



2 Planning Proposal

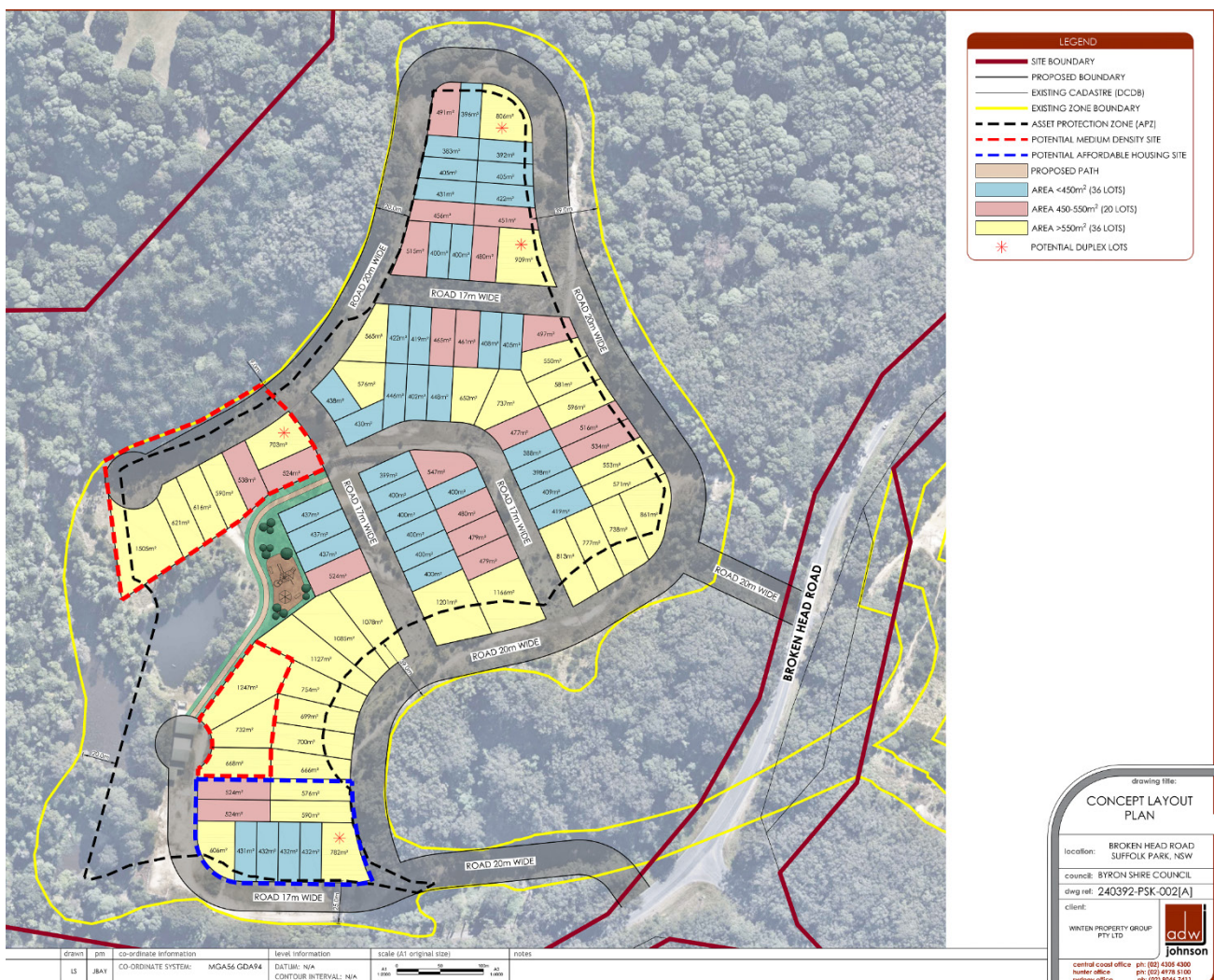
The primary objective of this planning proposal (PP) is to amend Byron LEP 2014 to rezone the RU1 Primary Production portion of the site to R2 Low Density Residential. This affects an area approximately 11.8 hectares in size. It will also change the Minimum Lot Size from 40 hectares to 400 m², and apply a maximum Floor Space Ratio of 0.6:1. The PP is provided as Appendix A.

The applicant has also offered a voluntary planning agreement (VPA) that includes the construction of a shared pedestrian and cycle path linking the site to Suffolk Park, plus an offer to dedicate 20% of lots to Council to be used for the purpose of affordable housing.

Technical reports supplied with the PP include an infrastructure capacity report (water and sewer), a strategic bushfire study and a biodiversity development assessment report (BDAR).

A preliminary concept plan indicates possible road and intersection locations, and a lot layout indicating approximately 92 residential lots of various sizes between 383 m² and 1,505 m² (Figure 3). This concept is not approved and is indicative of what might occur on the site if it were rezoned.

Figure 3: Concept layout for future residential use of the subject land



3 Strategic Merit

The following assessment is a strategic merit test based on the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023).

3.1 Is the planning proposal consistent with the relevant regional or subregional strategy?

No. The *North Coast Regional Plan 2041* (NCRP) was released in December 2022, and remains the current regional strategy for Byron Shire (and surrounding LGAs). The NCRP states (on page 17) in relation to housing:

Strategy 1.1

A 10 year supply of zoned and developable residential land is to be provided and maintained in Local Council Plans endorsed by the Department of Planning and Environment.

Council has prepared a residential strategy to address the supply of residential land in its LEP. It is currently being considered for endorsement by the Department. Once endorsed, LEP amendments may be expected to follow. It is not expected that LEP amendments would precede the strategy process.

The supporting NCRP text (on page 17) states:

Councils' future local housing strategies are to have a clear road map outlining and demonstrating how to deliver 40% of new dwellings by 2036 in the form of multi dwelling / small lot (less than 400m²) housing. Demonstrated movement towards achieving this target will also be essential when seeking to justify any urban growth area boundary variations for new greenfield land supply.

When planning for new greenfield areas across the North Coast, these should be located adjacent or near to existing urban areas to encourage the efficient use of land and infrastructure.

The NCRP further states (on page 18):

Strategy 1.2

Local Council plans are to encourage and facilitate a range of housing options in well located areas.

Strategy 1.3

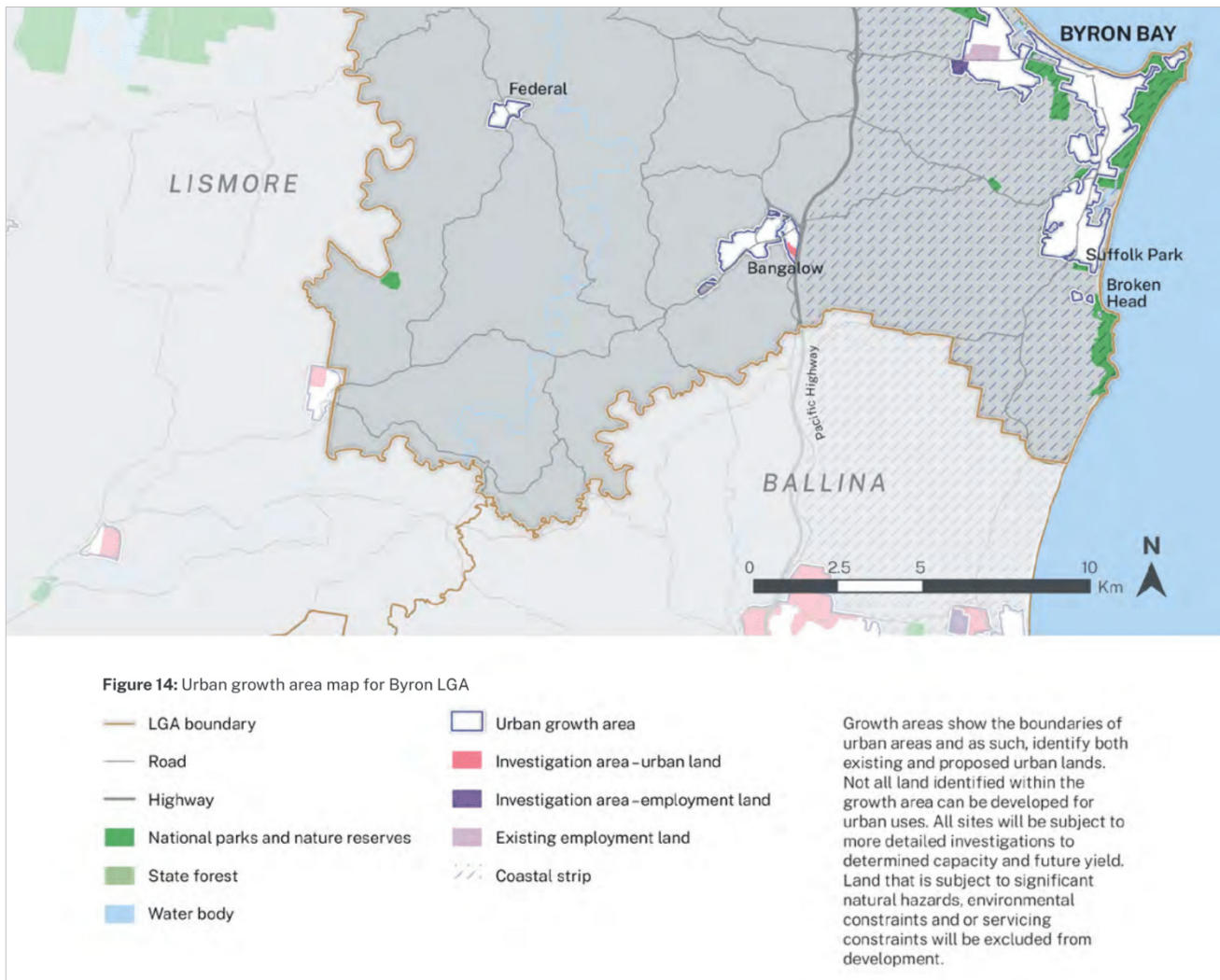
Undertake infrastructure service planning to establish land can be feasibly serviced prior to rezoning.

Strategy 1.4

Councils in developing their future housing strategies must prioritise new infill development to assist in meeting the region's overall 40% multi-dwelling / small lot housing target and are encouraged to work collaboratively at a subregional level to achieve the target.

The NCRP includes a map (on page 89) that shows the existing urban growth area and urban land investigation areas. The subject land is not included in either of these areas. It is also not located adjacent to the southern boundary of the Suffolk Park urban area. The proposed site entrance is approximately 750 metres from the nearest residential zone. Council has no plans to provide infrastructure and services to the subject land, which is currently not connected to reticulated water or sewerage.

Figure 4: Urban growth area map



Source: NCRP

The NCRP states (on page 23) in relation to biodiversity:

Strategy 3.1

Strategic planning and local plans must consider opportunities to protect biodiversity values by:

- *focusing land-use intensification away from HEV assets and implementing the ‘avoid, minimise and offset’ hierarchy in strategic plans, LEPs and planning proposals*
- *ensuring any impacts from proposed land use intensification on adjoining reserved lands or land that is subject to a conservation agreement are assessed and avoided*
- *encouraging and facilitating biodiversity certification by Councils at the precinct scale for high growth areas and by individual land holders at the site scale, where appropriate*
- *updating existing biodiversity mapping with new mapping in LEPs where appropriate*
- *identifying HEV assets within the planning area at planning proposal stage through site investigations*
- *applying appropriate mechanisms such as conservation zones and Biodiversity Stewardship Agreements to protect HEV land within a planning area and considering climate change risks to HEV assets*

- *developing or updating koala habitat maps to strategically conserve koala habitat to help protect, maintain and enhance koala habitat*
- *considering marine environments, water catchment areas and groundwater sources to avoid potential development impacts.*

A BDAR has been undertaken and it concludes that the proposed residential development will result in unavoidable impacts on 2.10 hectares of intact native vegetation, 0.94 hectares of regrowth vegetation and 3.62 hectares of planted native vegetation. Given that the proposed residential zone is approximately 11.8 hectares, the development will impact on native vegetation that occupies 56% of the potential development site.

The development would assist Council to meet its zoned land for housing target in its LEP. If 20% of it is dedicated to Council for affordable housing, this would be a positive outcome.

However, the subject land is not an urban growth area or urban land investigation area. It is not adjacent or contiguous with an existing urban area. It is not a minor matter. It is not proposed by Council to be serviced with reticulated water and sewerage. It will affect native vegetation across a large part of the site, and will result in a new urban community entirely surrounded by substantial areas of high biodiversity native vegetation.

The PP is not consistent with parts of the *North Coast Regional Plan 2041* and the inconsistencies have not been justified.

It is also notable that the land owners made representations to the (then) Department of Planning and Environment in 2017, and were specifically advised that “*the Department wishes to advise Leadshine Pty Ltd that the North Coast Regional Plan 2036 does not identify the quarry as a future urban growth area*” (Appendix B).

3.2 Is the planning proposal consistent with a relevant local council strategy?

No. In this case, there are a number of relevant local strategies and the subject land is not identified for residential development in any of them.

3.2.1 Byron Shire Residential Strategy 2041

This strategy was prepared, exhibited and then adopted by Council in December 2020; however, it was not endorsed by the State government. A peer review was undertaken and a Housing Options Paper was prepared and exhibited. A revised residential strategy was prepared and adopted by Council on 14 March 2024.

The subject land was considered for inclusion in the draft strategy but ruled out by Council decision on 20 June 2020 (Res 20-276) “due to inconsistency with the North Coast Regional Plan Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.” In particular, the report noted that the site was affected by a range of primary constraints, is isolated from existing urban areas, and is not connected to water and sewer infrastructure.

The strategy includes a wide range of infill and greenfield investigation areas across all parts of Byron Shire.

The subject land is not identified for residential purposes in the adopted *Byron Shire Residential Strategy 2041*.

It should be noted that the subject land was not included in the *Byron Bay and Suffolk Park Settlement Strategy 2002* and was also not included in the *Byron Residential Development Strategy 1993* (that preceded the 2002 version).

3.2.2 Byron Shire Local Strategic Planning Statement 2020–2036

The Local Strategic Planning Statement (adopted and approved in 2020) plans for the Byron community's economic, social, environmental and leadership needs from a strategic land use planning perspective in the 16-year period to 2036. In relation to land use and accommodating future residential growth, the LSPS states (on page 36):

Council is also preparing a Byron Shire Residential Strategy to guide the long term provision of housing in the Shire and will identify land suitable for particular types of residential growth, from new 'greenfield' area to infill development. The strategy is the result of three years of planning, research and community consultation

In relation to land use and accommodating future residential growth, the LSPS defers to the Byron Shire Residential Strategy.

The PP is not supported by the *Byron Shire Local Strategic Planning Statement 2020*.

3.3 Does the planning proposal respond to a change in circumstances that has not been recognised by the existing planning framework?

In this case, there is no new infrastructure that is relevant to residential development on the subject land.

Key government priorities are outlined in documents such as the NCRP and other government publications. It is acknowledged that there is a shortage of affordable housing and land for housing generally in Byron Shire. This is a key matter that is addressed in the *Byron Shire Residential Strategy 2041*, which has only just been finalised.

Population and demographic trends are also addressed in the *Byron Shire Residential Strategy 2041*.

The PP is not in response to a change in circumstances, not recognised by the existing planning framework.

4 Site-specific Merit

This requires an assessment of site-specific merit and compatibility with surrounding land uses, having regard to the following matters. Note that the site-specific merit assessment would normally only be undertaken for a planning proposal that passed the strategic merit test. This PP has not passed the strategic merit test. It has been undertaken in this case to ensure the PP is considered to the fullest extent based on available information.

The following assessment is a site-specific merit test based on the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023).

4.1 The natural environment (including known significant environmental values, resources or hazards)

4.1.1 Ecology and Native Vegetation

Technical reports supplied with the PP include a biodiversity development assessment report (BDAR). This report states (on page 7) "The strategic placement of the proposed development in cleared and degraded areas of the subject site ensure that there are negligible impacts to the value of a mapped wildlife corridor and minor waterways." This statement ignores that the site was the subject of a rehabilitation order, which became an enforceable undertaking in 2018, with most of the rehabilitation work taking place in 2019. This order was to undertake rehabilitation of the quarry site in accordance with its consent conditions, which included a Flora and Fauna Management Plan that states the goal is "To leave all land disturbed by quarrying and related activities as a safe, stable and well drained landform with a vegetative cover developing over the medium to long term towards an appropriate array of communities naturally occurring in the area."

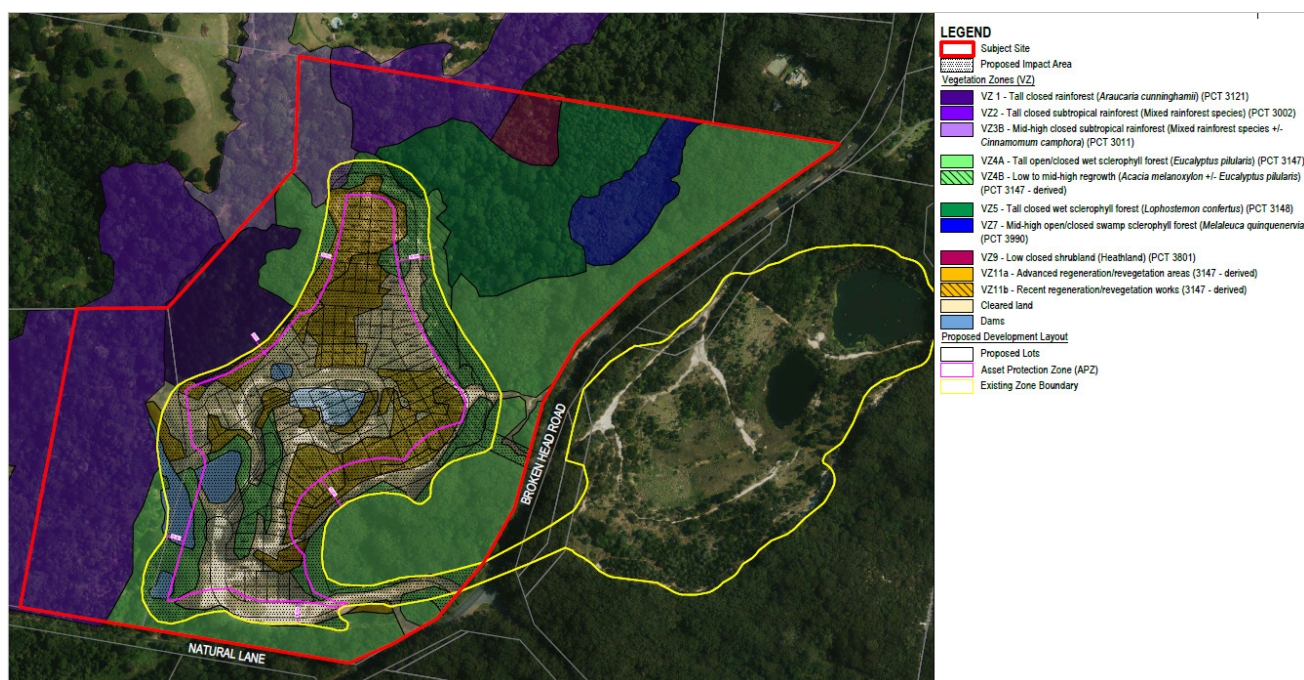
Clearly, the area described in the BDAR as "3.62 ha of planted native vegetation" is an area required to be rehabilitated as a result of the conditions of the quarry consent and the enforceable undertaking. A lot of this land contains advanced native vegetation plantings (Plate 1).

Plate 1: Advanced native rehabilitation is located in multiple locations proposed for residential development



It is also noted that the area proposed to be zoned R2 Low Density Residential is larger than the area subject to the draft concept layout assessed in the BDAR. The BDAR shows that native vegetation areas are proposed to be zoned R2 Low Density Residential (Figure 5).

Figure 5: Vegetation impact map



Source: BDAR

The BDAR also concludes that 6.65 hectares of native vegetation will be cleared for the proposed concept layout prepared by the applicant (Figure 6). The proposed R2 zone occupies approximately 11.8 hectares. Therefore, the likely clearing of native vegetation within the proposed R2 zone is 56%.

Figure 6: Impacts on vegetation zones

DIRECT IMPACTS ON VEGETATION ZONES

Vegetation Zone	PCT	TEC	Direct Impacts* (%)
VZ1: Tall closed rainforest (<i>Araucaria cunninghamii</i>)	3121 - Broken Head Lowland Rainforest (Good condition)	TEC Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions listed within schedules of the BC Act, and potentially representative of the TEC Lowland Rainforest of Subtropical Australia listed within schedules of the EPBC Act	0.07 ha (5%)
VZ3b: Mid-high closed subtropical rainforest (Mixed rainforest species +/- <i>Cinnamomum camphora</i>)	3011 - Far North Lowland Subtropical Rainforest (Good condition)	TEC Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions listed within schedules of the BC Act, and potentially representative of the TEC Lowland Rainforest of Subtropical Australia listed within schedules of the EPBC Act	0.06 ha (6%)
VZ4a: Tall open/closed wet sclerophyll forest (<i>Eucalyptus pilularis</i>)	3147 - Far North Brush Box-Bloodwood Wet Forest (Good condition)	n/a	1.90 ha (20%)
VZ4b: Low to mid-high regrowth (<i>Acacia melanoxylon</i> +/- <i>Eucalyptus pilularis</i>)	3147 - Far North Brush Box-Bloodwood Wet Forest (Regrowth)	n/a	0.94 ha (81%)
VZ5: Tall closed wet sclerophyll forest (<i>Lophostemon confertus</i>)	3148 - Far North Brush Box-Walnut Wet Forest (Good condition)	n/a	0.07 ha (2%)
VZ11a: Advanced regeneration/vegetation areas	3147 - Far North Brush Box-Bloodwood Wet Forest (Derived)	n/a	1.93 ha (96%)
VZ11b: Recent regeneration/vegetation works	3147 - Far North Brush Box-Bloodwood Wet Forest (Derived)	n/a	1.68 ha (100%)

Source: BDAR

The BDAR also identifies a range of threatened flora and fauna on the subject land that will be affected by future development. It does not address off-site impacts such as the proposed shared path, or infrastructure such as road widening (at intersections), and pipelines and pump stations for water and sewerage.

I do not agree that the proposed R2 zone will be confined to cleared and degraded land with negligible impacts. The extent of ecosystem credits and species credits required to offset are considerable, and indicate that this site has ecological values that are significant now and likely to increase as rehabilitation areas mature.

4.1.2 Slopes, Drainage and Geotechnical Information

No current site-specific slope analysis or geotechnical assessment of the subject land has been provided. This would normally accompany a site-specific planning proposal. The site has been substantially reshaped as part of the quarry rehabilitation, but there is no indication as to whether this work has made the site sufficiently stable to now be used for residential development. There is no information on areas that have been filled and no consideration of the proposed use of existing water bodies or filled land for future residential lots. It is noted that extensive drainage and surface water storage work has been undertaken to control the major erosion issues that the site showed in 2017. Some evidence of recent active erosion is still present on the site (Plate 2). Some parts of the site are still very steep (Plate 3).

Plate 2: Erosion gully on proposed residential land at top of site



Plate 3: Some parts of the proposed residential land are still very steep



Given the extent of earthworks undertaken for rehabilitation, it is unclear whether the site is sufficiently stable and in an appropriate landform to now be used for residential development.

4.1.3 Bushfire Hazard

The strategic bushfire hazard analysis of the subject land was undertaken in 2020, based on 2018 bushfire mapping. BSC adopted revised shire-wide hazard mapping in 2022. However, the site remains substantially either in a bushfire hazard category or a buffer. As the rehabilitation areas mature, this may change further. It is noted that the bushfire hazard analysis is reliant on a slope analysis. It appears that the LiDAR slope analysis was based on a surface analysis undertaken in 2010, before the site was reshaped for rehabilitation. This would need to be revised if it is to be relied upon.

Notwithstanding the outdated information, the report states (on page 41):

The landscape, vegetation and topographic studies show that this site is subject to a high bushfire threat which can be mitigated through compliance with PBP 2019 and additional measures.

Following the NSW RFS BFRMP Guidelines, the proposed development receives a 'Medium' risk rating. This risk rating is dependent upon access and egress to the site being provided in accordance with PBP 2019, ensuring safe movement into and away from the site by residents and emergency services during a bush fire event. This is significant because if adequate access and safe movement cannot be achieved, the risk rating would jump to 'Very High' and the development would require action to mitigate this risk into the future.

Other recommendations (on page 50) include:

The entire site shall be managed as an Inner Protection Area (IPA) as outlined within Appendix 4 of PBP 2019 and the RFS document Standards for asset protection zones;

An additional static water supply of 5,000L per residential lot is to be provided with appropriate equipment and connections complying with section 5.3.3 of PBP 2019;

Consideration should be given to landscaping and fuel loads on site to decrease potential fire hazards on site;

All future landowners should prepare a Bushfire Survival Plan in accordance with the RFS guide to preparing a Bushfire Survival Plan.

Bushfire hazard is a significant issue with this site. Although it can be addressed, this essentially requires removal and management of all vegetation within the proposed 11.8-hectare residential zone. Furthermore, it is reliant on a new access to Broken Head Road that may or may not be approved.

4.1.4 Land Contamination

No site-specific contaminated land analysis of the subject land has been provided. This would normally accompany a site-specific planning proposal.

Council is required, before land is zoned from a rural zone to a residential zone, to consider whether the land is contaminated; and if the land is contaminated, that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used. If the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority must be satisfied that the land will be so remediated before the land is used for that purpose.

The history of land use on this site is a quarry and the processing of quarry materials. The list of land use activities that may cause contamination (as identified in Table 1 of the Planning Guidelines) includes “mining and extractive industries”. It is noted that the proposed residential zone would cover all parts of the old quarry and processing site, and the potential to be contaminated is unknown (Plate 4). This is a major constraint to urban expansion that would need to be addressed before any rezoning could proceed. The land owner’s recent efforts to rehabilitate the site have not been based on any assessment of contamination and are not subject to a remediation action plan. Council has no information to determine whether this land is contaminated or not. This is a significant constraint to residential rezoning that would need to be addressed before any rezoning could proceed.

Plate 4: Parts of the site proposed for residential development have a past use that may have caused land contamination



4.1.5 Aboriginal Cultural Heritage

No site-specific assessment of the Aboriginal cultural heritage of the subject land has been provided. This would normally accompany a site-specific planning proposal. An AHIMS search was conducted on 3 May 2024 for Lot 1 DP 123302 with a 50-metre buffer (Figure 7). It shows that there is likely to be at least one Aboriginal site located on or near the subject land. There is no evidence of contact with the LALC or any site assessment by a qualified archaeologist.

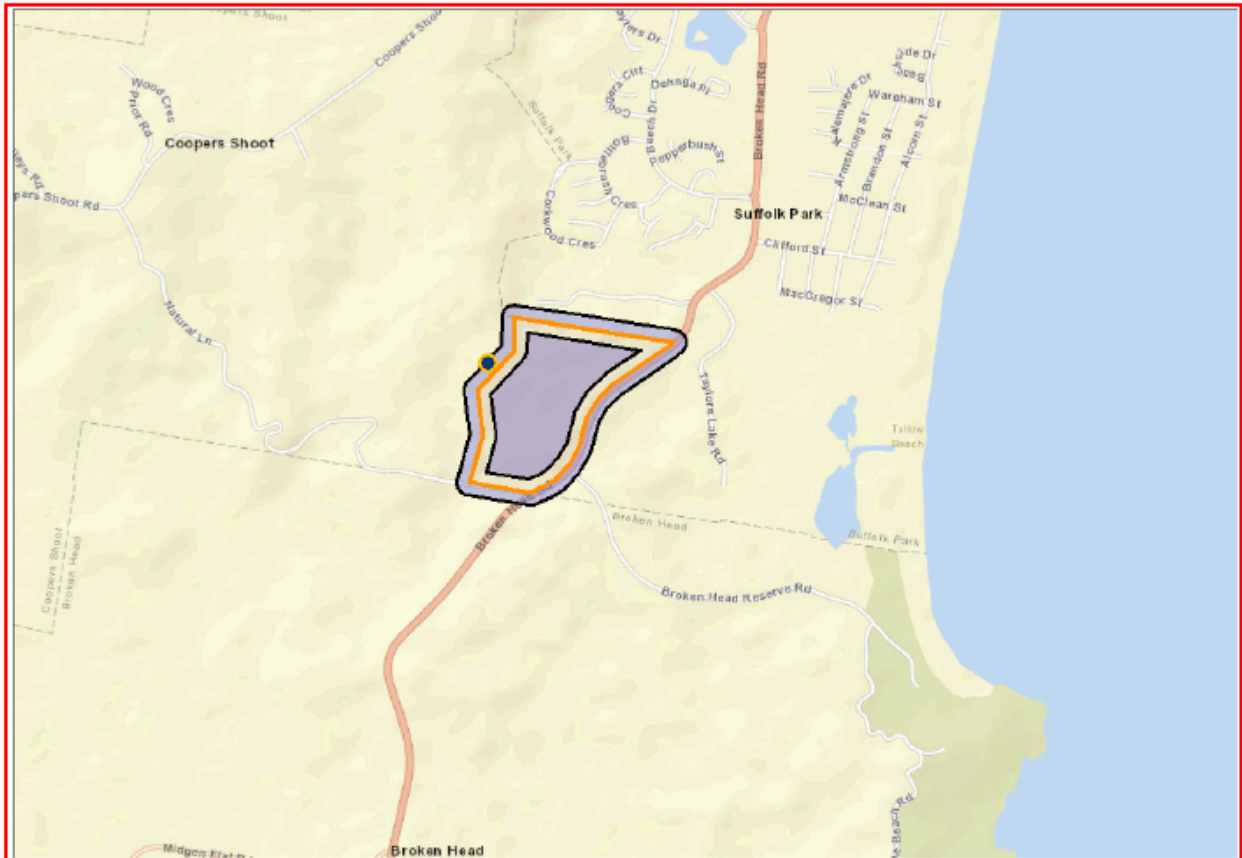
This is a significant constraint to urban rezoning that would need to be addressed before any rezoning could proceed.

Figure 7: AHIMS search result for Lot 1 DP 123302 with a 50-metre buffer

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 1, DP:DP123302, Section : - with a Buffer of 50 meters, conducted by Mike Svikis on 03 May 2024.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

1	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

4.2 The existing uses, approved uses and likely future uses of land in the vicinity of the proposal

The subject land is approximately 750 metres from the edge of the Suffolk Park urban area. The land immediately adjoining the site is heavily vegetated. There are rural dwellings on some neighbouring lots. Some land nearby is used for cattle grazing and some land is being used for horticulture. The other part of the original Broken Head Quarry is located east of Broken Head Road.

No land in the vicinity of the subject land is identified for future urban expansion. The most likely future use of adjacent land is environment protection land and limited areas of horticulture and grazing.

4.3 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

The applicant has provided a site-specific services and infrastructure assessment of the subject land that looks at water and sewer capacity in the locality.

In relation to sewer capacity, the report concludes (on page 6):

Nominally these show that if served by a single pumping station the available 10.7 L/s of sewer capacity could service 114 lots. However, the topography of the site dictates that, in lieu of a tunnel, at least two pumping stations are required reducing the lot yield to 93 lots.

In relation to water capacity, the report concludes (on page 7):

Advice from BSC is that the Suffolk Park water supply has plenty of capacity but there is a limitation to the elevation that can be supplied and meet the required levels of service. Pumped pressure zones exist in the area for this reason eg Corkwood.

It is understood that in excess of 20 L/s can be supplied at Connection Point 2 without impacting either the Suffolk Park or Broken Head supplies levels of service. This equates to the peak instantaneous demand (PID) for 133 lots or the fire requirement for a hydrant flow of 10 L/s at 95th percentile PID for 100 lots.

It is notable that the applicant has not addressed the practicality and environmental impacts of connecting the subject land to trunk water and sewer mains, which are located hundreds of metres away to the east of Broken Head Road (Figure 8). There is no assessment of the cost of off-site pipelines and connections, and the cost of building and running pump stations (potentially two for sewage and one for water). The BDAR notes the ecological significance of intact native vegetation surrounding the subject land. It should not be assumed that the narrow and heavily vegetated Broken Head Road reserve can accommodate multiple pipelines.

Figure 8: Water and sewer main locations east of Broken Head Road



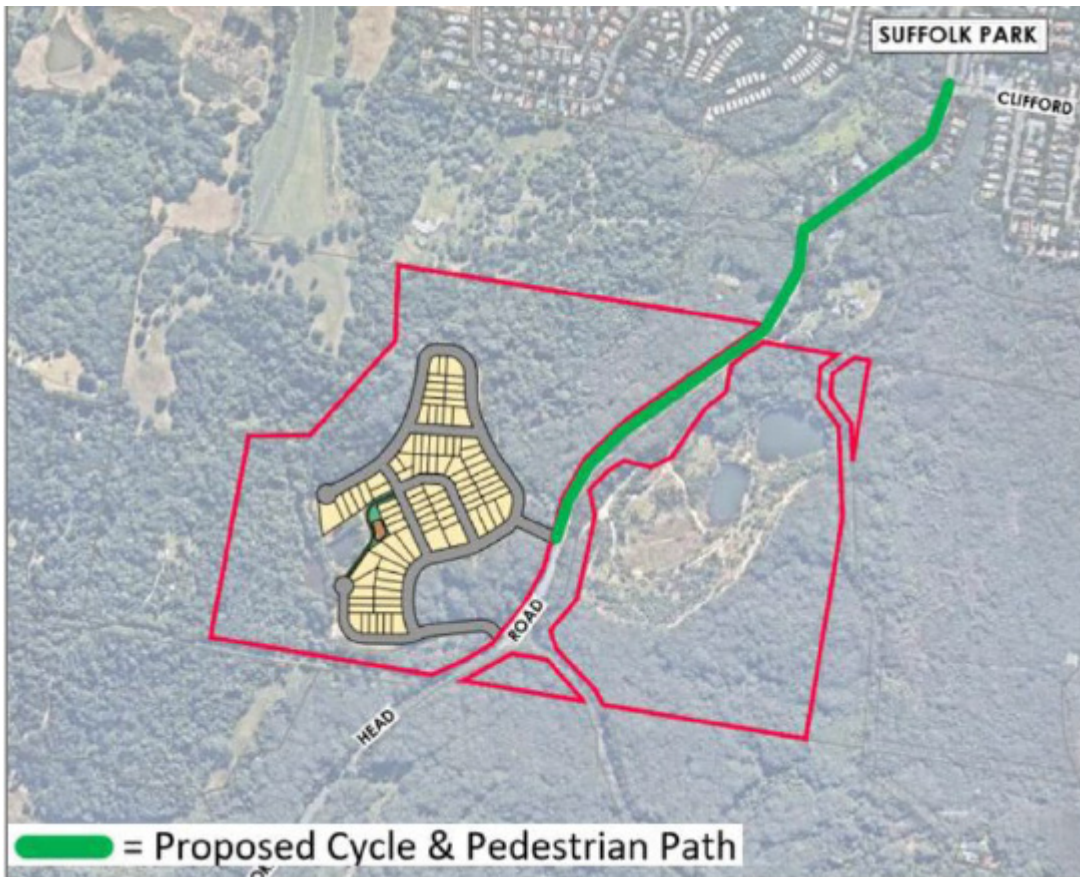
Source: AP Infrastructure report

Road access to the site is currently via a single point on a bend in Broken Head Road. Minimal information is provided regarding traffic generation and impacts from the site, or whether a second access proposed is practical or even possible given site topography and ecological constraints.

A shared path proposed to connect the subject land back to Suffolk Park is good for connecting this remote site to schools and neighbourhood shops, etc (Figure 9). However, it is not supported by any assessment of whether it can be achieved. By road reserve, this is a distance of approximately 1,000 metres. Parts of the road reserve in this section are narrow and heavily vegetated with variable topography such as cuttings and drop offs. It is not certain that the shared path can be constructed without considerable cost and ecological impact.

No information is supplied on the practicality of upgrading and connecting electricity to the subject land. NBN connections are not currently available in this locality.

Figure 9: Site access and proposed shared path



There is not enough information to conclude that the site will be able to be serviced, and no indication of the environmental impacts or financial impacts of this on Council or any other service providers.

5 Conclusion

5.1 Strategic Merit

The PP is not consistent with the *North Coast Regional Plan 2041*. It is also not consistent with the *Byron Shire Residential Strategy 2041* and the *Byron Shire Local Strategic Planning Statement*. It is not consistent with any previous residential strategies.

Council is actively addressing the need to ensure an adequate supply of residential zoned land, both in greenfield areas and infill development opportunities. This land has been considered on a number of occasions and has not been supported. Council monitors land development and is aware of supply and demand trends. There is no evidence of changed circumstances that would warrant rezoning the subject land from rural to residential.

This PP cannot be supported based on an assessment of strategic merit.

5.2 Site-specific Merit

The PP is not adequately supported by reports or assessments of the subject land that address environmental, hazards, infrastructure and other issues. It is not the intention of this report to recommend that such reports or assessments be undertaken. The site-specific merit assessment would normally only be undertaken for a planning proposal that passed the strategic merit test. This PP has not passed the strategic merit test. The site-specific merit assessment has been undertaken in this case to ensure the PP is considered to the fullest extent based on available information.

A specific study of the biodiversity on this site has been undertaken. It concluded that impacts on threatened species and threatened ecological communities cannot be avoided despite confining most of the development to areas disturbed in the past. The development will impact on native vegetation that occupies 56% of the development site. The report does not address off-site impacts such as the proposed shared path, or infrastructure such as road widening (at intersections), and pipelines and pump stations for water and sewerage. On balance, the report concludes that areas of native vegetation of various quality will be cleared by future residential development (based on the concept design) and offsets will be required. There is no indication of how practical or costly this may be. It is also not clear if future bushfire hazard clearing to protect dwellings and infrastructure will also impact native vegetation on and beyond the subject land.

The site has been substantially reshaped as part of the quarry rehabilitation work, but there is no indication as to whether this work has made the site sufficiently stable to now be used for residential development. There is no information on areas that have been filled and no consideration of existing water bodies proposed for residential use. It is noted that extensive drainage and surface water storage work has been undertaken to control the major erosion issues that the site exhibited in 2017, yet parts of the site are still actively eroding and parts are quite steep.

The supplied strategic bushfire hazard analysis of the subject land was undertaken in 2020, based on 2018 bushfire mapping. BSC adopted revised shire-wide hazard mapping in 2022. However, the site remains substantially either in a bushfire hazard category or a buffer. As the rehabilitation areas mature, this may change further. It is noted that the bushfire hazard analysis is reliant on a slope analysis. It appears that the LiDAR slope analysis was based on a surface analysis undertaken in 2010, before the site was reshaped for rehabilitation. Bushfire hazard is a significant issue with this site. Although it can be addressed, this essentially requires removal and management of all vegetation within the proposed 11.8-hectare residential zone. Furthermore, it is reliant on a new access to Broken Head Road that may or may not be approved.

No site-specific contaminated land analysis of the subject land has been provided, yet the history of land use on this site is defined by the State as a potentially contaminating land use. The level of contamination (if any) is unknown. The rehabilitation work that has been undertaken has not addressed this issue. This is a major constraint to urban expansion that would need to be addressed before any rezoning could proceed.

No site-specific assessment of the Aboriginal cultural heritage of the subject land has been provided. An AHIMS search with a 50-metre buffer shows that there is likely to be at least one Aboriginal site located on or near the subject land. There is no evidence of contact with the relevant LALC or any site assessment by a qualified archaeologist. This is a significant constraint to urban expansion that would need to be addressed before any rezoning could proceed.

It is notable that the applicant has not addressed the practicality and environmental impacts of connecting the subject land to trunk water and sewer mains, which are located hundreds of metres away to the east of Broken Head Road. There is no assessment of the cost of off-site pipelines and connections, and the cost of building and running pump stations (potentially two for sewage and one for water). The BDAR notes the ecological significance of intact native vegetation surrounding the subject land. It should not be assumed that the narrow and heavily vegetated Broken Head Road reserve can accommodate multiple pipelines.

Road access to the site is currently via a single point on a bend in Broken Head Road. Minimal information is provided on traffic generation and impacts from the site, or whether a second access proposed is practical or even possible given site topography and ecological constraints.

A shared path proposed to connect the subject land back to Suffolk Park is good for connecting this remote site to schools and neighbourhood shops, etc. However, it is not supported by any assessment of whether it can be achieved. By road reserve, this is a distance of approximately 1,000 metres. Parts of the road reserve in this section are narrow and heavily vegetated with variable topography such as cuttings and drop offs. It is not certain that the shared path can be constructed without considerable cost and ecological impact.

No information is supplied on the practicality of upgrading and connecting electricity to the subject land. NBN connections are not currently available in this locality.

This PP cannot be supported based on an assessment of site-specific merit.

Appendices

Appendix A: Planning proposal submitted by applicant (under separate cover)

Appendix B: Letter from the Department of Planning and Environment to the land owner in 2017

APPENDIX A

Planning proposal submitted by applicant

APPENDIX B

Letter from the Department of Planning and Environment
to the land owner in 2017



Contact: Stewart McLachlan
Phone: 02 6575 3405
Email: stewart.mclachlan@planning.nsw.gov.au
Date: 11 August 2017

Leadshine Pty Ltd
5 Punch Street
BALMAIN NSW 2041

Attention: Stuart Dixon-Smith, Director

Dear Mr Dixon-Smith,

ORDER NO 15

Batson Sand and Gravel Quarry (Broken Head Quarry) – DA97_0465

I refer to the Department of Planning and Environment's (The Department) letter dated 30 June 2017 notifying you that the Minister for Planning (Minister), by his delegate, Kirsty Ruddock, Director – Compliance and Investigations, intends to give you, as the person entitled to act on Development Consent DA97_0465 (Consent) in respect to Batson Sand and Gravel Quarry (Broken Head Quarry), an Order No. 15 under section 121B of the *Environmental Planning and Assessment Act 1979* (the Act), as proposed in the draft order at **Attachment 1** (Proposed Order).

On 3 August 2017, the Department received representations from you, on behalf of Leadshine Pty Ltd in relation to the proposed Order. The Department has carefully considered these representations and has made the following change to the Proposed Order:

- Extended the period for compliance for the Order by approximately 1 month to allow further time to plan and undertake the required rehabilitation.

The Department has now finalised the Proposed Order. A final version of the Order is attached as **Attachment 1**. Please note, this Order prescribes the bare minimum required by Leadshine Pty Ltd to achieve compliance with the Consent in relation to rehabilitation. This Order does not relinquish other requirements that Leadshine Pty Ltd may have under their Consent, Environmental Protection Licence or associated other site approvals.

To provide Leadshine Pty Ltd with further clarity in response to your representations, the Department wishes to advise Leadshine Pty Ltd that the North Coast Regional Plan 2036 does not identify the quarry as a future urban growth area.

Lastly, should you wish to discuss the matter further, Department representatives are available to meet in person on Friday 18 August 2017 at 11.00am in its Pitt Street offices, Sydney.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'KR'.

Kirsty Ruddock
Director - Compliance and Investigations
As delegate of the Minister for Planning

Attachment 1: Order



MikeSvikisPlanning

ABN 84638645183

3 Gibingbell Close Ocean Shores 2483

Mob: 0447 805 871

Ph: (02) 6680 1003

E: mikesvikisplanning@bigpond.com